IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8061 OF 2003

Dada Narhari Shedge (deceased)
through his legal heirs and legal
representatives:
1a. Shivaji Dada Shedge & Ors. : Petitioners

V/s.

The Commissioner, Pune Division & Ors. : Respondents

...

Mr.S.P.Thorat for the petitioners.

Mr.S.K.Chinchalikar, Asstt. Govt. Pleader, for the respondent nos.1 to 3.

...

CORAM : S.A. BOBDE, J.

July 8, 2005.

P.C.:

1. The petitioners have challenged the order rejecting their request for releasing the land from acquisition.

2. The learned counsel for the petitioners relied on section 48 of the Land Acquisition Act, 1894 which reads as follows:-

"48. Completion of acquisition not

> **compulsory, but compensation to be awarded when not completed.**--(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.
>
> (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

It is clear that, vide sub-section (1) of section 48, the Government is at liberty to withdraw from acquisition only

when possession has not been taken.

3. Admittedly, in the present case, possession has been taken and there is a record to that effect. In terms therefor, section 48 does not apply. The order of the Addl. Commissioner, Pune Division, does not call for interference. The petition is, therefore, dismissed. The petitioner shall be at liberty to make such representation, as may be advised, offering other land to the Government.

Sd/-

S.A. BOBDE, J.